

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**T.A NO. 484 OF 2010  
(WRIT PETITION (CIVIL) NO.1652 OF 1990)**

**GAUTAM SANYAL**

**...APPELLANT**

**V.**

**UNION OF INDIA AND OTHERS**

**...RESPONDENTS**

**ADVOCATES**

**MR. C.M KHANNA FOR THE APPELLANT  
MR. AJAI BHALLA FOR THE RESPONDENTS**

**CORAM**

**HON'BLE MR. JUSTICE S.S KULSHRESTHA, MEMBER  
HON'BLE LT. GEN. Z.U SHAH, MEMBER**

**J U D G M E N T**

**19.04.2011**

1. Challenge in this writ petition is directed against the General Court Martial proceedings dated 28.10.1986, whereby the petitioner was held guilty of having committed the offences punishable under Sections 52(f) and 63 of the Army Act and sentenced to be cashiered and to suffer rigorous imprisonment for

one year. On formation of the Armed Forces Tribunal, the writ petition had been transferred to this Tribunal and is treated as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. The facts of the case as set out by the appellant in a nutshell are: After successfully holding varied appointments in the Army, including coveted posts of Instructor at the Madras Engineers Group Centre, Bangalore and also at the College of Military Engineering, Pune, the appellant was appointed as Garrison Engineer (Projects) No. 2 (GE (P) No. 2), Gurdaspur in April 1982. He carried out his duties with dedication and distinction and received letters of appreciation from the authorities. Subsequently, in September 1983, in recognition of his excellent performance as Garrison Engineer (Projects) No. 2, the appellant was appointed to the post of Garrison Engineer (Projects), Gurdaspur. In September 1983, Lt. Col. SS Gill, who from the inception had an aversion towards the appellant, took over charge as new CWE (P) in the place of Lt. Col. Satish Malhotra. Taking advantage of this situation, certain unscrupulous persons sent a baseless complaint against the appellant and his subordinates. Lt. Col. Gill initiated a staff Court of Inquiry, finding of which turned out

to initiate disciplinary proceedings against the appellant. On 21.8.1984, he was attached to Station Headquarters, Gurdaspur so as to facilitate the disciplinary proceedings. A charge sheet was drawn up against the appellant on 25.3.1985, followed by recording of summary of evidence. The said charge sheet was cancelled and a modified charge sheet was issued to the appellant subsequently on 19.5.1985 and a fresh summary of evidence was recorded. As nothing incriminating against the appellant came out, it was found that there was no mala fide intention on his part in placing the supply orders. Despite his innocence, a trial by GCM was ordered. Out of the six charges levelled against the appellant, the GCM found him guilty of five charges and sentenced him to undergo rigorous imprisonment for one year and to be cashiered. Both his pre and post confirmation petitions resulted in rejection. Hence the appeal.

3. It was contended by learned counsel for the appellant that the appellant was falsely implicated as a consequence of the conspiracy devised by Lt. Col. SS Gill and other officers. Based on the Court of Inquiry held, the appellant was tried by the GCM on frivolous charges. The appellant was not afforded a fair opportunity as

contemplated under Army Act Section 180 and also at the stage under Army Rules 22 to 24. Moreover, no reliance could be placed on the testimony of the witnesses, as they were tutored.

4. This appeal was resisted by the respondents contending, inter alia, that the charges against the appellants were proved to the hilt having found the evidence adduced in the case were cogent. He was heard at length at every stage and a fair opportunity was provided during the trial by the GCM. No bias or personal grudge could be attributed, since the evidence in the case supported the prosecution version. Further, it was obligatory on the part of the appellant to prove the allegation of mala fides, which he has not done.

5. Before appreciating the evidence adduced by the parties, it would be useful to extract the charges for which the appellant faced trial. They are:

**FIRST CHARGE**

**Army Act Section 52(f)**

**SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF ARMY ACT WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON**

in that he,

at Gurdaspur during 03 Sep 83 while performing the duties of GE(P) No.2 Gurdaspur, with intent to cause wrongful loss to the Govt, placed two supply orders in respect of repairs to lorry 3 Ton Shaktiman, BA No.37405 bearing No.3005/81/E3 and No.3005/88/E3 for Rs.9900/- and Rs.9050/- respectively on Hanspal Engg Wks, Gurdaspur and Sunrising Traders, Batala including replacement of first gear in both the supply orders.

### **SECOND CHARGE**

#### **Army Act Section 52(f)**

#### **SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF ARMY ACT WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON**

in that he,

at Gurdaspur during Sep 83 while performing the duties of GE(P) No.2, Gurdaspur, with intent to cause wrongful loss to the Govt, placed two supply orders in respect of repairs to lorry 3 Ton, BA No.53861 bearing No.3005/89/E3 of 03 Sep 83 and 3005/97/E3 of 10 Sep 83 for Rs.9300/- and Rs.2655/- respectively on Adarsh Sales Corporation, Gurdaspur and Hanspal Engg Wks Gurdaspur including repairs to gear box in both the supply orders which gear box had already been repaired vide an earlier supply order No.3005/60/E3 dt 30 Jul 83.

**THIRD CHARGE**

**Army Act Section 52(f)**

**SUCH AN OFFENCE AS MENTIONED IN CLAUSE (f) OF SECTION 52 OF ARMY ACT WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON**

in that he,

at Gurdaspur, on 04 Sep 83, while performing the duties of GE(P) No.2, Gurdaspur, with intent to cause wrongful loss to the Govt, placed a supply order, bearing No.3005/86/E3 for Rs.2548/- on Jag Mohan Auto Electric Wks, Gurdaspur for repairs to AC Pump of veh BA No.6678W which AC pump had already been repaired vide an earlier supply Order No.3005/48/E3 dt 28 Jul 83.

**FOURTH CHARGE**

**Army Act Section 57(d)**

**AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE**

in that he,

at Gurdaspur, on 10 Sep 83 while performing the duties of GE(P) No.2 Gurdaspur, improperly split the job pertaining to repairs to truck 1 Ton BA No.13441 into two jobs and, with a view to bring the transaction within his financial powers, placed on Hanspal Engg Wks, Gurdaspur two supply orders as follows, in place of one, contrary to the instructions contained in Army HQ Letter No. 33600/E3/P&C dt 27 Mar 78:

(a) 3005/95/E3 for Rs.3680/-

(b) 3005/96/E3 for Rs.8438/-

### **FIFTH CHARGE**

#### **Army Act Section 63**

#### **AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE**

in that he,

at Gurdaspur, during Sep 83, while performing the duties of GE(P) No.2 Gurdaspur improperly placed following supply orders exceeding his financial powers as laid down vide Item 3, Table 'B' of Regulations for Military Engineer Services, 1968:

	<b>Supply Order No &amp; Date</b>	<b>Amount</b>
(a)	3005/90/E3 dt 03 Sep 83	Rs.10,100.00
(b)	3005/94/E3 dt 05 Sep 83	Rs.10,120.00
(c)	3005/107/E3 dt 13 Sep 83	Rs.10,450.00
(d)	3005/115/E3 dt 13 Sep 83	Rs.11,450.00

### **SIXTH CHARGE**

#### **Army Act Section 63**

#### **AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE**

in that he,

AT Gurdaspur, during Sep 83, while performing the duties of GE (P) No.2, Gurdaspur omitted to exercise proper supervision over his staff which resulted ni forwarding the supply orders to firms by ordinary post

instead of Regd Post, contrary to the instructions contained in AHQ, E-in-C's Br letter No.336600/E3/P&C dt 27 Mar 78 laying down that all supply orders will be despatched by Regd Post.

6. At the outset, it is to be noted that the findings arrived at by the GCM pertaining to Charge No. 4 were not affirmed by the General Officer Commanding in Chief. The conviction rested only in respect of the remaining charges. The point that requires our consideration is, whether the appellant could be held guilty in placing orders with regard to the repair of the Saktiman vehicle in contravention to the accepted procedures, which supposedly resulted in huge loss to the Government? There is no denial with regard to the fact that the appellant had placed supply orders, evidenced by Exhibits "T" and "U". Both these supply orders, which bore the same date, pertained to the same vehicle. In order to ascertain whether there was overlapping of the items/repairs, for which orders were placed, it would be useful if we reproduce the supply orders viz. Exts. "T" and "U". They are:



S. No	Description	A/U	Qty	Rate	Amount
	DEMAND OF REPAIR TO LORRY 3 TON SHAKTIMAN BA NO 37405				
(a)	Repair and overhauling of FIP including the supply and fixing the following:  (i) Plunger elements complete set (ii) Nozzles complete set (iii) Rubber pressure washers (iv) Celebration and testing the same to give specific results.	Job	1	3900	3900.00
(b)	Retention of the road spring of suspension system by supplying and fixing of the following:-  (i) Suspension pin - 4 Nos (ii) Bushing pin - 4 Nos (iii) Rubber bushing - 4 sets	Job	1	1500	1500.00
(c)	Opening of gear box and refixing the same with replacement of the following:  (i) Gear Nos 2 - 1 No (ii) Clutch Fingers - 2 Nos (iii) Clutch release bearing - 1 No (iv) Fork for gear lever - 1 No	Job	1	4500	4500.00
	<b>Total</b>				<b>9900.00</b>

Ser No	Description of Items/stores	A/U	Qty	Rate	Amount
	<u>REPAIRS TO VEHICLES</u>				
	The following repairs are urgently required to Lorry 3 Ton Shaktiman BA No 750 37405:				
(a)	Repair/replacement of crown pinion of the differential wheel complete including material and labour charges and testing the vehicle on road to give satisfactory results.	Job	One	3500	3500.00
(b)	Repair/overhauling of gear box including replacement of 1 <sup>st</sup> and 3 <sup>rd</sup> gear, including bearings, sleeves and forks driving including all material and labour testing of vehicles to give satisfactory results.	Job	One	4500	4500.00
(c)	Supplying and fixing of the flywheel ring complete along with labour charges and testing the vehicles to give satisfactory results.	Job	One	1050	1050.00
	<b>Total</b>				<b>9050.00</b>

Ext. "T" was issued to M/s. Hanspal Engineer Works and Ext. "U" was issued to M/s. Sun Rising Traders. If we scan through the items

specified in the supply order, shown at “C”, it could be seen that it pertained to Gear Box and the supply order shown at “B” also related to the Gear Box of the same vehicle viz. BA 37405 Saktiman. The striking feature is that on the same date for the very same vehicle, two different suppliers were chosen for setting right the gear box. The distance between these two workshops was about 40-50 kms. It looks awkward or gauche that the vehicle was sent to M/s Hanspal Engineer Works. This situation creates doubt when two different firms were required to carry out the same work of the vehicle viz. one for carrying out the work of Gear No.2 and the other for Gear Nos. 1 and 3. It required to be explained by the appellant, in view of Section 106 of the Indian Evidence Act. Section 106 of the Indian Evidence Act reads thus:

**“106. Burden of proving fact especially within knowledge:--** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

It was within the knowledge of the appellant that supply orders for the same work of the same vehicle were given to two suppliers, but the work was carried out only at the garage of M/s. Hanspal Engineer Works. It was within the special knowledge of the appellant as to how the repairs in one vehicle had been carried out. He failed to furnish any explanation for the same. From the evidence of PW 12, it was clear that at occasions, mechanics from different carriages used to visit his workshop for carrying out necessary repairs. He has not furnished sufficient explanation. In this situation, adverse inference has to be drawn against the appellant. Reliance may be placed on the decision in **Sucha Singh v. State of Punjab** (2001(4) SCC 375 para 19).

It reads:

“We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.”

The statement of the appellant does not disclose why he chose to give supply orders to different firms. In this respect, it would be useful to refer to the evidence of PW 6 Vijay Kumar, Superintendent (Electrical & Mechanical), Amritsar. He made it clear that as per the car diary, the vehicle BA 37405 was put to service from 1.8.1983 to 2.9.1983 and not put to service from 3.9.1983 to 12.9.1983. 13.9.1983 onwards, the vehicle started its service. To prove this, he had produced the car diary, evidenced by Ext. "HHHH". It does not contain any details of the vehicle having been sent for repairs during these dates. According to him, if the vehicle was sent for repairs, entry to that effect would be made in the case diary. However, no such details were shown in the case diary, which implied that the vehicle was not sent for repairs. In the mileage card (Ext. IIII), there were erasures and interpolations, which were stated to have been made by the appellant himself. The testimony of this witness could not be impeached from the side of the appellant.

7. Learned counsel for the appellant placed reliance on the statement of PW 11 Sub Maj Swinder Singh, Garrison Engineer (Project) Gurdaspur, who had stated that both the supply orders vide

Exts. T and U were in respect of the same vehicle viz. 3 Ton Sakthiman bearing registration number BA 37405. The repairs were carried out and no loss whatsoever was caused to the State Exchequer. PW 12 Balvinder Singh, the owner of M/s Hanspal Engineer Workshop, has stated about repairs having been carried out. It was also stated by him that occasionally mechanics from different service stations used to visit his workshop. However, the fact remains that the vehicle did not move out and no endorsement regarding its moving out for carrying out repairs was seen to have been made in the car diary.

8. It was also argued that PW 7 Sub Samar Singh Nahar had made it clear that supply orders were placed to different firms and it would be incorrect to say that there was no mechanical defect for the vehicles referred to therein. PW 7 was declared hostile as nothing could be proved through him, either regarding placing orders to different firms or regarding non making of endorsement in the car diary. From the attending circumstances, it is clear that both the supply orders were fake and payments were made through Exts. "NN" and "OO", when the vehicle did not move out for repairs, as is

clear from the car diary. From such attending circumstances, one can, by a process of intuitive reasoning, infer existence of facts in issue or factum probandum (see **Vijay Kumar Arora v. State (Government of NCT of Delhi)**). Therefore, the findings of the GCM on this charge do not require any interference.

7. Next we come to Charge No.3, which pertains to issue of two different supply orders dated 29.7.1983 vide Ext. "Z" and dated 4.9.1983 vide Ext. "Y" regarding AC Pump. In the first order (No.3005/48/E-3 dated 29.7.1983), the AC Pump was repaired for Rs.176. The details of the works carried out as stated by PW 11 are:

"Now I am shown supply order No. 3005/48/E-3 dated 29 July 1983, (Exhibit – 'z'), in respect of repairs to vehicle Jeep Pick Up BA No 6578W. I had inspected this vehicle during the period when the repairs shown in the supply order Exhibit – 'z' were carried out on it. The AC pump of this vehicle was replaced.

Now I am shown supply order No. 3005/86/E-3 dated 04 September 1983 (Exhibit – 'Y'), in respect of Jeep Pick Up BA No. 6678W. I had inspected this vehicle during the period when the repairs shown in the said supply order were carried out. Only AC pump kit was replaced in the repairs of AC pump carried out by this supply order. The kit includes rubber parts, diaphragm, seal and gasket."

From the above, it is clear that both the supply orders were for different works. PW 11 further made it clear that the repairs shown in Ext. "Z" to Jeep Pick Up BA 6678W were carried out and the repairs shown in Ext."Y" were carried out by replacing the AC Pumpkit of the same vehicle. The prosecution was not able to prove any mala fide intention on the part of the appellant causing loss to the Government in getting the two works carried out evidenced by Exts. "Z" and "Y". Therefore, this charge is also not established.

8. As regards Charge No. 5, it was submitted by learned counsel that the appellant had not exceeded the financial powers while issuing supply orders. In this regard, reference to the financial powers vide Ext. "CC" has been referred, which conform to execution of such powers, which had the limit upto Rs.10,000/-. But such powers are not inclusive of other store purchases, as was highlighted in Regulation 748, which reads as under:

The purchase powers under Table are subject to the stores rules in FA Part I. The powers should be determined with reference to the value of a number of similar articles purchased at the same time and not by the total cost of all the items purchased at a time. One supply order may be issued for a group of dissimilar



items though the total value of the supply order exceeds the direct purchase powers of the authority issuing the supply order, if the value of each such item is within his powers. In such a case a certificate that the items are dissimilar will be endorsed on the supply order.

Purchase orders for similar articles will not be split up to avoid the necessity of obtaining the sanction of higher authority required with reference to the total amount of the orders.

Purchases will be made in the most economical manner and in accordance with the definite requirements of the Service. Except for articles of proprietary nature purchased from accredited agents, purchases will be made on the basis of competitive tenders whenever practicable.

The financial powers are to be read along with Regulation 748 which shows that store purchases are separate from the repair works. In this case, Supply Order Nos. 30085/90/E3 dated 3.9.1983, 30085/90/E3 dated 5.9.1983 and 3005115/E3 dated 13.9.1983 were for supply of store items. The amount of these supply orders did not exceed the limit of Rs.10,000/-. Therefore, the prosecution has not succeeded in proving this charge as well.

9. Charge No. 6 pertained to the offence under Section 63 as appellant having not properly exercised his authority by sending the supply order to the firm “by ordinary post” instead of “registered post”, which is contrary to the instructions contained in HQ Engineering in Chief Letter No. 33600/E/P&C dated 27.3.1978. The purpose of sending supply orders by registered post is to ensure its proper service. But this allegation against the appellant does not have any basis as it did not fall within his charter of duties. It appears to be a lapse on the part of the officer in the Despatch Department and the appellant cannot be held liable such lapses. This charge also would not stand.

10. In view of the aforesaid discussion, Charge No. 1 alone is found to have been established against the appellant and in rest of the charges no culpability can be fixed on him. He deserves acquittal in respect of these charges.

11. Now what remains to be considered is the quantum of sentence, so far as Charge No. 1 is concerned. Though the first charge refers about the offence under Army Act Section 52(f) viz. having

caused wrongful loss to the Government by placing two supply orders in respect of repairs to 3 Ton Shaktiman BA No.37405 for Rs.9900/- and Rs.9050/- respectively, the court martial ought to have kept in mind the principle behind Army Act Section 72 while awarding the punishment regard being had to the nature and degree of the offence. For the offence under Army Act Section 52(f), the punishment is to suffer imprisonment for a term which may extend to ten years or such less punishment as is mentioned in the Act. The lesser punishments are enumerated in Army Act Section 71, depending upon the nature of the act or omission. Having regard to the degree of the offence, we are constrained to say that the punishment awarded to the appellant is shockingly disproportionate. There appears to be an element of arbitrariness in awarding the punishment of cashiering. The sentence of imprisonment for one year would commensurate with the gravity of the offence, for which he was held guilty.

12. The conviction of the appellant for the offence under Army Act Section 52(f) specified in Charge No.1 is upheld. He is acquitted of rest of the offences under Charge Nos.2, 3, 5 and 6. The

sentence of cashiering and the rigorous imprisonment for one year is converted to the sentence of imprisonment he had already undergone. The appeal is partly allowed.

**(Z.U SHAH)**  
**MEMBER**

**(S.S KULSHRESTHA)**  
**MEMBER**